

## **APPENDIX A**

### **U.S. Institute for Environmental Conflict Resolution**

The U. S. Institute for Environmental Conflict Resolution is a Federal program established by the U. S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent Federal agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict.

The provision of third party neutrals to provide professional assistance in managing conflict and resolving disputes is a principal component of the FHWA's National Dispute Resolution System. The U.S. Institute for Environmental Conflict Resolution (USIECR) assembled a panel of qualified facilitators and mediators to help the resource agencies obtain the services of these independent neutrals. The USIECR maintains a National Roster of Environmental Dispute Resolution and Consensus Building Professionals, and has assembled the Sub-Roster of Transportation Mediators and Facilitators (Transportation Roster). The Transportation Roster members are professionals with expertise in facilitating environmental reviews of transportation projects and mediating disputes that arise from such reviews. They received training on the USDOT's Environmental Streamlining efforts and the dispute resolution strategies presented in this document.

Transportation Roster membership covers a wide geographic area, with most states having at least one member. Contracting for the services of a member involves contacting the USIECR, describing the location of the project, the need for a facilitator or mediator, and working with USIECR staff to obtain profiles of candidate practitioners, and making a selection.

Rapid selection is obviously a critical need in order to start or restart the negotiation process or to resolve a dispute to maintain momentum and meet project timelines. Note that Federal Acquisition Regulations (FAR, Section 6.302 *and* 41 USC 253(c)399(c)) exempt the hiring of certain experts and neutrals used in dispute resolution from "full and open competition." This can expedite the procurement process. The mechanics of using the USIECR's services and contracting for a transportation mediator or facilitator are described on their website at [www.ecr.gov](http://www.ecr.gov). The cost of contracting can be covered by project funds.

## **APPENDIX B**

### **Guidance Development and Review Process**

The guidance presented in this document addresses a system to resolve a class of disputes – those associated with the review of transportation projects – rather than a process for resolving one specific dispute. To assist in designing the dispute resolution system, the USIECR assembles a team of specialist in ADR, several of whom have special expertise in the design of dispute resolution systems. Members included ADR practitioners in the private sector as well as ADR specialists in the public sector. The members of the development team were:

Robert Baum  
Office of Hearings & Appeals  
Department of the Interior  
Washington, DC

Doug Thompson  
US EPA, Region 1  
Office of Ecosystem Protection  
Boston, MA

Robert M. Jones, Director  
Florida Conflict Resolution Consortium  
Tallahassee, FL

Louise Smart  
CDR Associates  
Boulder, CO

Larry Gadt  
Department of Agriculture, U.S. Forest Service  
Washington, DC

John G. Wofford  
Private Practitioner  
Boston, MA

Jack Mahon  
U.S. Army Corps of Engineers  
Washington, DC

Discussions with the design team on designing the dispute resolution system were held during two meetings held in Washington, D.C., and in numerous conference calls. Some team members were also involved in reviewing drafts of the guidance document.

The draft guidance was reviewed by FHWA and other Federal agency representatives, as well as state agency representatives. The draft was also posted on the FHWA website where review comments were solicited.

The final guidance represents the collective input and wisdom of the agency representatives that were interviewed (see Appendix C), agency representatives who reviewed the draft, the FHWA Office of NEPA Facilitation, the USIECR design team, and the USIECR.

## APENDIX C

### Agency Stakeholder Interviews – Summary and Conclusions

This is an abstract of a report on the results of interviews with representatives from transportation, environmental resource, environmental regulatory and historic preservation agencies: *Environmental Streamlining Dispute Resolution Project, Alternative Dispute Resolution System Design – Stakeholder Interview Summary*, W. Steve Lee and Dale Keyes, U.S. Institute for Environmental Conflict Resolution, for the U.S. Department of Transportation, Federal Highway Administration, September 2000.

#### Purpose and Process

An important early step in designing an ADR system is to conduct an assessment of how disputes are currently managed or resolved and whether there is a need for new or improved dispute resolution processes. Stakeholders<sup>1</sup> are the best source of this information. The assessment results set the context for the design of an ADR system.

The USIECR sought from the FHWA and the other signatory agencies to the Environmental Streamlining National Memorandum of Understanding (MOU) recommendations of individuals from Federal and some key state agencies to consult during the assessment. In addition to the USDOT (FHWA and FTA), the signatory agencies to the MOU include the:

- U.S. Department of the Interior (Fish and Wildlife Service - USFWS and National Park Service - NPS)
- U.S. Department of Agriculture (U.S. Forest Service - USFS)
- U.S. Department of Commerce (National Marine Fisheries Service - NMFS)
- U.S. Army Corps of Engineers (USACE)
- U.S. Environmental Protection Agency (EPA), and
- Advisory Council on Historic Preservation

The FHWA and other members of the Environmental Streamlining Interagency Work Group<sup>2</sup> provided the names of the people with experience in transportation planning and NEPA. These included representatives from each of the Federal agencies listed above, state departments of transportation (state DOTs), and state historic preservation offices (SHPOs). As the table below shows, a total of 34 interviews were conducted with individuals with at least one interview in each of ten Federal regions. In

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<sup>1</sup> A stakeholder is one who is directly affected by the outcome of a decision-making process, and can include government agencies, advocacy groups and individual citizens. However, because this effort focuses on disputes involving Federal and state agencies, the stakeholders referenced in this discussion are the individuals most likely to represent an agency's interests in a negotiation.

<sup>2</sup> The Environmental Streamlining Interagency Work Group includes representatives from each of the signatory agencies to the National Environmental Streamlining MOU. The purpose of the Work Group is to implement and support environmental streamlining efforts in their respective agencies.

addition, eight consultations were conducted with headquarters staff of environmental resource and regulatory agencies in Washington, DC (see footnote 4).

### INTERVIEWS BY AGENCY AND FEDERAL REGION<sup>3</sup>

AGENCY (Interviews)	Federal Region									
	1	2	3 <sup>4</sup>	4	5	6	7	8	9	10
USACE (4)										
FHWA <sup>5</sup> (5)										
FTA (4)										
USFWS (2)										
NMFS (5)										
SHPO <sup>6</sup> (2)										
EPA (3)										
USFS (2)										
State DOTs (14)										
Other <sup>7</sup> (1)										

The interviews were conducted by telephone during May and June 2000 by W. Steve Lee. Each interview lasted an average of 45 minutes.

The purpose of the interviews was to capture individual experiences and observations related to the NEPA review process as it is applied to transportation projects. The interview subjects were not provided any questions in advance of the interview. It is important to note that the interview subjects spoke on the understanding that the comments would not be attributed to a specific individual. However, many of the statements below do mention specific agencies. In some instances the interviews included more than one representative from the agency.

The interviews collectively constitute a survey of stakeholders. However, no attempt was made to assure statistical representativeness whereby results could be evaluated quantitatively by geographical area or agency. Instead, common experiences and general themes were sought that could be used to inform the design of an ADR system.

#### Interview Topics

The following topics were used as an organizing structure for the interviews:

- Factors that Slow the Project Development and NEPA Review Processes
- Conflicts that Lead to Impasse
- How Conflicts are Resolved Currently

<sup>3</sup> See Appendix A for more detail.

<sup>4</sup> This column includes discussions with headquarters staff in Washington, DC to identify particular concerns for their agency and to identify candidates for consultation.

<sup>5</sup> This row includes state level FHWA Division Offices and Regional Resource Centers. See Appendix A for more detail.

<sup>6</sup> SHPO is an acronym for State Historic Preservation Office(er). There is a designated SHPO in each state.

<sup>7</sup> This represents a nonprofit environmental organization.

- Experience with Facilitation/Mediation and Training
- Examples of Successful Conflict Management and Resolution
- Suggested Roles for the FHWA

## Conclusions

Following are general conclusions drawn from the interviews:

1. Experience with transportation development and environmental review varies substantially among states and among agencies. A “one size fits all” approach to environmental streamlining and, more specifically, to the design of an ADR system, is not appropriate.
2. Collaborative planning and decision-making in the early stages of transportation project development should work seamlessly with conflict resolution processes implemented at the NEPA review stage. Taken together, they should be viewed as conflict management.
3. Collaborative activities during the NEPA review process are also useful in reducing the frequency and intensity of conflict.
4. Financial constraints continue to be a major limitation to the ability of resource and regulatory agencies to engage in collaborative processes. Funding of resource and regulatory agency positions by state DOTs as allowed under TEA-21 appears to overcome this impediment where it has been used.
5. Reaching agreements among agencies on points of concurrence, timelines for sign-offs, and the written records of concurrence will set the stage for faster reviews and better management of disputes when they arise.
6. Most current dispute resolution systems employ elevation procedures. However, the nature of the elevation varies significantly among agencies and by applicable regulation.
7. Model environmental streamlining structures address conflict resolution by identifying specific points of concurrence in the environmental review process, and designing processes to be applied at each of these points.

**APPENDIX D**

**ENVIRONMENTAL STREAMLINING  
NATIONAL  
MEMORANDUM OF UNDERSTANDING**

Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21) calls for a coordinated environmental review process to expedite Federal highway and transit projects. The agencies below agree to streamline environmental review processes in accordance with TEA-21 and other relevant environmental statutes in ways that reinforce our Federal responsibility to protect the environment. To meet this commitment, we agree to:

**Reduce Project Delays**

- Identify solutions such as programmatic agreements to reduce unnecessary project delays, including delays caused by staffing constraints, and to amend rules and policies where needed without compromising environmental quality.
- Apply the necessary technical and financial resources to identify and resolve issues early, especially on projects that are not typical or have potential to create the most damaging impacts to the environment.
- Direct field organizations to work collaboratively to develop processes that assure the timely, cost-effective development of sound transportation plans and projects.
- Emphasize the use of concurrent review of plans and projects.
- Develop national procedures for dispute resolution and encourage the use of appropriate mechanisms and organizations.
- Provide timely review and constructive comments on transportation proposals focusing additional information requests on information which is needed to reach an informed decision.
- Support and encourage field offices to explore flexible streamlining opportunities on their own and with state transportation and environmental partners including developing MOUs to lay out mutual expectations, funding agreements in support of streamlining, and concurrent review within cooperatively determined time frames. One example might be pilot projects to investigate new methodologies that lead to a single public interest decision to satisfy multiple agency requirements.
- Establish, with stakeholder input, goals, performance measures, and benchmarks to evaluate transportation and environmental decision making

**Protect and Enhance Environmental Quality**

- Work with project sponsors to ensure that they comply fully with all applicable environmental laws, regulations, and policies, and address fully any information needs associated with such statutes by providing complete and high quality information within the relevant timeframes.
- Seek to identify information needs early so the relevant environmental statutes can be addressed fully.

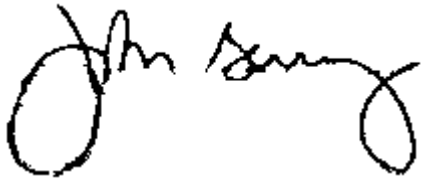
- Recognize effective local or regional coordination processes that are currently underway, build upon and publicize successful practices, and promote creative solutions and innovative methods that reduce economic and environmental costs.
- Assess alternative actions and identify the action that is in the best overall public interest.
- Ensure broad stakeholder involvement, including nontraditional stakeholder, as well as underserved and underrepresented constituencies, and public participation throughout the environmental review process.

We will strive to ensure that transportation projects are protective of and more compatible with the natural and human environment and we commit to continuously improve and streamline the processes used to develop those projects.




Mortimer L. Downey  
Deputy Secretary  
U.S. Department of Transportation  
7-20-99

Date



John Berry  
Assistant Secretary  
Policy, Management and Budget  
U.S. Department of Interior  
7-08-99

Date



D. James Baker  
Undersecretary for Oceans  
and Atmosphere  
U.S. Department of Commerce



Joseph W. Westphal  
Assistant Secretary of the Army  
U.S. Army Corps of Engineers  
7-01-99

Date



Peter D. Robertson  
Acting Deputy Administrator  
U.S. Environmental Protection Agency

7-01-99

Date



Cathryn Buforn Slater  
Chairman  
Advisory Council for Historic Preservation

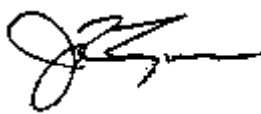
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Date

7-14-99

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Date



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James R. Lyons  
Under Secretary for Natural  
Resources and Environment  
U.S. Department of Agriculture

7-20-99

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Date

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## **APPENDIX E**

### **Example Guiding Principles for Problem Solving and Dispute Resolution**

Following are overarching principles for negotiating, solving problems and resolving disputes during the project review stage. They have been borrowed from programs in selected states, and are offered here as initial considerations for developing a framework for negotiations and dispute resolution.

- Each agency has a seat at the table, and its role and responsibility must be respected.
- Each agency should come to the table with an open mind, prepared to work to find an acceptable transportation solution that is compatible with its mission.
- Agencies will strive to provide sufficient staffing for full participation in the process.
- Scoping is open and continuous throughout the process.
- At major project milestones, agencies will participate in concurrence points.
- After formal concurrence, agencies will not revisit a milestone unless there is substantive new information that warrants reconsideration.
- To resolve disagreements, issues should be addressed as soon as possible and at the lowest level possible.

## **APPENDIX F**

### **Example Discussion Groundrules**

Discussion groundrules provide a structure for negotiation and problem solving in meetings. They are designed to manage discussion, encourage constructive exchange of ideas, and move participants toward solutions to disagreements. Groundrules should be developed and agreed upon by all participants at the beginning of the transportation planning or project review process.

General groundrules may cover a wide range of topics, such as: representation and attendance, speaking issues (e.g., the order and length of presentations), the structure of discussions, how agreement will be determined (e.g., majority vote or consensus and how consensus will be defined), documentation of agreements, and issues of confidentiality and relationships with the media. Many of these items are discussed separately in Section 5. The focus here is on discussion groundrules. Following are typical groundrules for assuring that discussions are constructive and efficient:

- Wait to be recognized by the chair before speaking.
- Be focused and brief in your presentation; stay on the subject being discussed.
- Be open and forthcoming; share information, ideas and concerns.
- Be respectful; no put-downs or use of derogatory language.
- Allow the other participants to speak without interruption.
- Listen carefully to what is said; try to understand the basic interests of the presenter.
- Check that you understand by restating what you heard in your own words.
- Try to think of ways in which everyone's interests can be satisfied.

APPENDIX G

Maryland Conflict Resolution Hierarchy

***MARYLAND'S  
STREAMLINED  
ENVIRONMENTAL  
AND REGULATORY  
PROCESS  
(for Transportation Projects)***

## CONFLICT RESOLUTION PROCESS

While the conflict resolution process will likely be used most often to resolve issues associated with the streamlined environmental/regulatory process concurrence points, SHA and/or any of the concurring/commenting agencies may request that the process be initiated to resolve any issue when an impasse has been reached. (Depending on the nature of the conflict, it may be appropriate to involve agencies other than those actually initiating the resolution process (i.e., other interested environmental agencies, local governments, etc.)) The sample process outlined below indicates how the process is envisioned to work in resolving issues relating to the environmental/regulatory concurrence process.

After reviewing the draft concurrence/comment package prior to the formal Interagency Review presentation, an agency may identify an issue which would prevent it from concurring. The agency should notify SHA of the issue via E-mail, no later than 2 weeks prior to the formal presentation. This notification should specify whether any additional information is needed and should also specifically request time to caucus at the upcoming monthly Interagency Review meeting, if necessary. SHA will try to address these concerns at the upcoming Interagency Review meeting.

### **SAMPLE PROCESS**

- After the formal Interagency Review presentation, a caucus session may be convened (if requested) as Step 1 in the conflict resolution process. Following the caucus, the results should be reported before conclusion of the interagency meeting, along with a determination of whether resolution was achieved. If not, agencies must specify what information is required to resolve the issue to their satisfaction and whether Step 2 of the conflict resolution should be initiated.
- If resolution of the issue was achieved, SHA will circulate the final version of the concurrence/comment package to the agencies within 2 weeks of the Interagency Review meeting, updated to include any supplemental information requested at the meeting.
- If SHA is unable to address agency comments on the preliminary package, the cover letter transmitting the formal package will indicate the reason why this information has not been furnished, and may include a request by SHA to initiate Step 2 of the conflict resolution process.

- Within 2 weeks of receipt of the formal concurrence/comment package, a non-concurring agency sends formal written correspondence to SHA, specifying issues still preventing concurrence and identifying any additional information needed to resolve the issue(s). The letter should also document that Step 2 in the conflict resolution process has been initiated and request that a meeting with appropriate agencies be scheduled.
- A Step 2 meeting of appropriate working staff and/or first level managers from the agencies in conflict is scheduled (within 15 days of receipt of a written or verbal request), and additional information is developed for presentation at the meeting.
- At least 7 days prior to the meeting, SHA provides an agenda outlining the purpose of the meeting, issues to be discussed, and any new information that will be provided in response to agency requests.
- At the conclusion of the meeting, the participants should recommend elevating any issues still in dispute to subsequent steps in the conflict resolution process. Minutes of the meeting should be prepared and distributed by SHA within 7 days of the meeting which reflect any agreements reached, any issues still outstanding, and concluding recommendations for further action (if required).
- Should the conflict remain unresolved past Step 2 in the process, the issue(s) will be elevated through subsequent meetings between the Interagency Managers, using the same procedure previously outlined, until a resolution of the issue(s) has been agreed upon.

## **APPENDIX H**

### **Example Executive Panel Structure for Upward Referral of Disputes**

Following is a “Standing Executive Panel” form of conflict resolution under consideration by a state DOT. This structure could be used on a project-specific basis, or it could be established on an on-going basis for a series of projects.

#### **Agreement:**

The key to prevention/resolution of conflicts on complex transportation projects, which involve 404 issues, is regular, continuous dialogue across the agencies, at all levels. The leadership of these agencies (the state DOT, FHWA, and US Army Corps of Engineers) will meet regularly as a Board to model an open, trusting, and problem solving approach where concerns can be laid on the table and the agencies will focus attention on working them out. The Board process will serve as the state’s conflict resolution plan. This process must be defined so it can continue if and when personnel changes occur in leadership positions in these agencies.

#### **Implementation:**

The FHWA Division Administrator, the District Commander of the US Army Corps of Engineers, and the Deputy Director of the state DOT (chosen because of his environmental leadership role for the DOT) will serve as an Executive Board (“the Board,”) and will meet regularly. The Board will serve as the state’s conflict resolution process. The purpose of this Board is to:

- Advance the program or project through resolution of issues and meeting the needs of the transportation, regulatory, and resource agencies
- Provide corporate guidance on tough projects where: there are unresolved issues, timely agreement at key project development points cannot be achieved at the staff level, or higher authority is needed to approve a course of action or use of resources suggested by the staff level
- Forge general agreements that may impact multiple projects or issues
- Model a practice of working together to solve problems and a commitment to moving the program forward to whatever outcome is appropriate

The philosophy of the Board is that the Board’s function is to help the project managers be successful by using the Board’s authority to remove barriers to resolution and to assume risks where necessary. The focus will be to attack the problem, not to criticize an agency or person. Board members will approach issues both from their agency viewpoint and from a corporate, multi-agency perspective.

Operational structure of the Board:

1. The Board will meet monthly at first (shifting to bi-monthly later, if appropriate). Board meetings will typically be scheduled for two hours.
2. The Board will hold special meetings when an issue arises that needs their attention and that cannot wait until the regularly scheduled meeting. The project manager can request special meetings of the Board.
3. The Board meetings will be working sessions where the Board discusses issues in the presence of relevant staff. The Board decides what staff is needed for each meeting, depending on the issues on the agenda. The staff help the Board maintain perspective on local, pragmatic needs inherent in the presented issue.
4. The responsibility for hosting the meeting (arranging the meeting place and developing the agenda) will rotate among Board members.
5. The host agency will gather agenda items from its staff and from the other agencies and will then distribute the agenda to the agencies so that each agency can bring the appropriate staff/information to the meeting.
6. Any project manager or agency may raise an issue to the Board. The Board will focus on those issues that will affect time, quality, cost, and location/design of the project as well as those more general issues that have crosscutting implications for multiple projects or interagency processes.
7. The person who raises an issue will take the lead in the discussion of the issue. Each affected agency will participate in the briefing on the issue.
8. Regular Board meeting agendas will include:
  - Informational updates
  - Review of critical projects with problems
  - Decision making on application of policy, procedures (general things)
  - Relationship building/sharing what's going on
9. Where there is lack of agreement at key points in the streamlining program/project development process, including non-agreement from other agencies, the Board will make a decision on whether the project should advance to the next step.
10. Documentation from each Board meeting will include (a) decisions that were made and (b) actions that were agreed to, identifying the party responsible for undertaking the action and the time frame for the action.
11. When people raise issues that are not appropriate for Board deliberations, the Board or an individual Board member can make procedural decisions on how to address these issues, or an individual Board member can take action outside Board meetings to get these issues resolved.

## APPENDIX I

### Joint Briefing Paper Template

Following is a template that could be used to prepare joint briefing paper to accompany a dispute that is referred upward for resolution by higher authorities.

The purpose of the Joint Briefing Paper is three-fold:

- (1) To ensure there is a common definition of the issue and to focus the decision makers on the question to be resolved.
- (2) To indicate the nature of the issue and the type of expertise needed to aid informed decision making.
- (3) To clarify areas of agreement and disagreement and provide a simple, succinct description of the issue(s) and situation.

The paper is prepared jointly by the participating agencies. In cases where decisions makers request agency position papers or “background papers,” these should be prepared separately by the respective agencies.

A. Joint overview of the issues (3-5 pages):

1. *The Question.* [The key question to be answered by the decision makers, including a joint statement of recommendation, if any, by the agencies.]
2. *Issue Descriptions.* [A brief statement of the nature of the issue, identifying whether they are legal, technical, policy or resource in nature. The issue description may identify sub-issues that are included under the main issue.]
3. *The Urgency of the issues.* [A description of the need and a recommended timeline for decision making, including a statement of the consequences of delay in decision making.]
4. *The Potential Impact of the Issues/Decision.* [An identification of the risk, cost, precedent-setting nature, local/regional/national significance and other impacts and implications of the issues.]
5. *Assertions.* [A listing of the assertions of each participating agency relevant to each unresolved issue.]
6. *Background and Findings of Fact.* [A succinct description of the historical and/or environmental conditions of the site or situation that sets the stage or context for the issue. This section may include a stipulation of relevant facts to which the parties agree and an identification of facts which remain in disagreement. Quotations from relevant documents may be included as part of the informational background to the issue.]
7. *Options Considered to Date.* [A listing, with brief descriptions, of the options that have been considered to date by one or more of the participating agencies. The listed options provide a set of decisions from which the decision makers may



or may not select. This listing of options provides specificity to the decision makers about the response that is requested.]

- B. Supportive documents. [Relevant attachments, such as cost analyses, technical or legal evaluations, documents from regulatory agencies, etc.]

## APPENDIX J

### Bibliography of Conflict Management and Dispute Resolution Literature

Following is a selected list of key books on various aspects of conflict management and dispute.

#### Meeting Facilitation

Doyle, Michael and Straus, David (1984). *How to Make Meetings Work*. New York, NY: Jove Books.

#### Communication and Negotiation

Fisher, Roger and Ury, William (1985). *Getting to Yes: Negotiating Agreement Without Giving In*. New York, NY: Penguin Books.

Lewicki, Roy. J.; Saunders, David M.; and Minton, John W. (1999). *Negotiation*. Boston, MA: Irwin/McGraw-Hill.

Ury, William (1993). *Getting Past No*. New York, NY: Bantam Books

#### Collaborative Problem Solving and Consensus-Building

Gray, Barbara (1989). *Collaborating: Finding Common Ground for Multiparty Problems*. San Francisco, CA: Jossey-Bass Publishers.

Policy Consensus Initiative (1999). *A Practical Guide to Consensus*. Bismark, ND: Policy Consensus Initiative.

Susskind, L., and Cruikshank, Jeffrey (1987). *Breaking the Impasse. Consensual Approaches to Resolving Public Disputes*. New York, NY: Basic Books.

Susskind, L.; McKearnan, Sarah; and Thomas-Larmer, Jennifer (1999). *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*. Thousand Oaks, CA: Sage Publications.

#### Mediation and Dispute Resolution

Moore, Christopher W. (1986). *The Mediation Process. Practical Strategies for Resolving Conflict*. San Francisco, CA: Jossey-Bass Publishers.

Nagel, Stuart S. and Mills, Miriam K. (eds) (1991). *Systematic Analysis in Dispute Resolution*. New York: Quorum Books.

Ury, William L.; Brett, Jeanne M.; and Goldberg, Stephen B. (1993). *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*. Cambridge, MA: Program on Negotiation at Harvard Law School.

## Environmental Conflict Resolution

Bingham, Gail (1986). *Resolving Environmental Disputes: A Decade of Experience*. Washington, DC: The Conservation Foundation.

Rubino, Richard G. (1990). *Mediation and Negotiation for Planning, Land Use Management, and Environmental Protection: An Annotated Bibliography of Materials*. 1980-1989. Chicago, IL: Council of Planning Librarians.

Susskind, Lawrence; Bacow, Lawrence; and Wheeler, Michael (eds) (1983). *Resolving Environmental Regulatory Disputes*. Cambridge, MA: Schenkman, Publishing Co.

## Managing Scientific and Technical Data in Collaborative Processes

Adler, Peter; Barrett, Robert; Bean, Martha; Birkhoff, Juliana; Ozawa, Connie; Rudi, Emily (2000). *Managing Scientific and Technical Information in Environmental Cases: Principles and Practices for Mediators and Facilitators*. Washington, DC: RESOLVE, Inc, U.S. Institute for Environmental Conflict Resolution, Western Justice Center Foundation.

Rovers, Frank A. (2000). *The Use of Technical Experts and High Tech Tools in Alternative Dispute Resolution. (The Technical Experts Perspective)*. Waterloo, Ontario Canada. Conestoga-Rovers & Associates.

Titerle, Jim, and Hughes, Nicholas R. (2000). *What we learned in Atlanta: The Use of Experts and High Tech Tools in Mediations*. Vancouver, British Columbia: McCarthy Tetrault.

## Appendix K

Federal Agency Roles and Responsibilities Under NEPA and Environmental Streamlining				
AGENCY	<i>1a) What is your agency's mission?</i>	<i>1b) What is your agency's responsibility under NEPA?</i>	<i>2a) What is your agency's role in NEPA?</i>	<i>2b) What is your agency's role in carrying out environmental streamlining?</i>
ACHP	<ul style="list-style-type: none"> <li>Promote protection and enhancement of resources.</li> <li>Ensure that preservation values are factored into Federal agency planning and decisions through the Section 106 process.</li> </ul>	<ul style="list-style-type: none"> <li>The Council establishes standards for Agency use of the NEPA process for Section 106 purposes and reviews environmental documents when NEPA/NHPA 106 review are coordinated per 36CFR 800.8.</li> </ul>	<ul style="list-style-type: none"> <li>Oversees the Section 106 review process, facilitates program agreements for expediting routine projects.</li> <li>Facilitates programmatic agreements for expediting routine projects.</li> <li>Provides guidance on planning involvement under Section 106.</li> </ul>	<ul style="list-style-type: none"> <li>Advocate for agencies to advance unresolved controversial issues up through the appropriate channels.</li> <li>Serve an educational role, giving all parties involved a greater understanding of the Section 106 process and the need to initiate the process early.</li> </ul>
FHWA	<ul style="list-style-type: none"> <li>Continually improve the quality of our nation's highway system and its intermodal connections.</li> <li>Protect and enhance the environment.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure compliance.</li> <li>Abide by the law to ensuring that proper documentation exists.</li> <li>Use NEPA as a forum for decision-making.</li> <li>Act as the steward for the environment.</li> </ul>	<ul style="list-style-type: none"> <li>Be an effective Federal lead agency – this role also applies to the Federal Transit Administration (FTA).</li> <li>Bring together legal constructs and stakeholders (especially Federal agencies), in order to meet all the various, sometimes conflicting, needs.</li> <li>Manage the process so transportation projects can be implemented.</li> </ul>	<ul style="list-style-type: none"> <li>Establish the regulatory framework for establishing a coordinated review process as called for in TEA-21.</li> <li>Find tools for everyone involved to work better together.</li> </ul>
EPA	<ul style="list-style-type: none"> <li>Safeguard the natural environment.</li> <li>Protect human life.</li> </ul>	<ul style="list-style-type: none"> <li>Review all Environmental Impact Statements (EISs); comment on EISs in writing; make EIS comments available to the public (Section 309 Clean Air Act).</li> <li>Identify problems and refer unsatisfactory projects to CEQ.</li> </ul>	<ul style="list-style-type: none"> <li>Work with the project's lead agency to ensure that environmental statutes are met (per Section 309 of Clean Air Act and Section 404 of Clean Water Act).</li> <li>Take broad look at issues – ecosystem management, environmental justice, biodiversity, and aquatic habitats.</li> </ul>	<ul style="list-style-type: none"> <li>Establish multi-disciplinary teams to get the right people to the right meeting at the right time.</li> <li>Promote cooperative agreements for the Section 404 process.</li> </ul>
USACE	<ul style="list-style-type: none"> <li>Protect the nation's aquatic resources.</li> <li>Provide for fair decisions.</li> <li>Provide timely decisions.</li> </ul>	<ul style="list-style-type: none"> <li>Identify, evaluate, and permit projects that affect aquatic resources.</li> </ul>	<ul style="list-style-type: none"> <li>Serve as a regulatory and cooperating agency.</li> <li>Participate in the review process for the nation's aquatic resources.</li> </ul>	<ul style="list-style-type: none"> <li>Advocate early involvement in the scoping of projects.</li> <li>Shorten decision-making times.</li> </ul>

Federal Agency Roles and Responsibilities Under NEPA and Environmental Streamlining				
AGENCY	<i>1a) What is your agency's mission?</i>	<i>1b) What is your agency's responsibility under NEPA?</i>	<i>2a) What is your agency's role in NEPA?</i>	<i>2b) What is your agency's role in carrying out environmental streamlining?</i>
USFS	<ul style="list-style-type: none"> <li>Manage the 191 million acres of land under FS jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>Participate early and often in an integrated way with other agencies' planning processes.</li> <li>Serve dual role of land manager and transportation manager, which involves collaborative relationships in order to protect the National Forests for the purposes for which they were created.</li> </ul>	<ul style="list-style-type: none"> <li>Create roads that provide sustainable access to the nation's forests and are managed within the environmental capability of the land.</li> <li>Provide safe, convenient, and efficient travel on 380,000 plus miles of National Forest roads.</li> </ul>	<ul style="list-style-type: none"> <li>Identify transportation needs.</li> <li>Envisions the creation of state level MOUs that have provisions for dispute resolution and specifics on how agencies should work together.</li> <li>Coordinate state activity.</li> </ul>
FWS	<ul style="list-style-type: none"> <li>Conserve, protect, and enhance fish and wildlife and their habitats for the benefit of the American people.</li> </ul>	<ul style="list-style-type: none"> <li>Provide technical assistance to other agencies.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure sustainability.</li> <li>Keep the NEPA process moving.</li> </ul>	<ul style="list-style-type: none"> <li>Implement Reimbursable Agreements between USDOT and FWS.</li> <li>Appoint regional transportation coordinators to provide technical assistance on environmental streamlining.</li> </ul>
NOAA	<ul style="list-style-type: none"> <li>To understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet the nation's economic, social and environmental needs.</li> </ul>	<ul style="list-style-type: none"> <li>To consider the impacts of actions on the marine environment both within and beyond the US Exclusive Economic Zone (EEZ).</li> <li>To fully integrate NEPA into the agency's planning and decision making process.</li> </ul>	<ul style="list-style-type: none"> <li>Responsible for ensuring NEPA compliance for NOAA</li> <li>Provide liaison with CEQ and EPA on NEPA issues</li> <li>Develop and provide training, procedures, and national policy to ensure NOAA's compliance with NEPA.</li> </ul>	<ul style="list-style-type: none"> <li>NOAA will strive to ensure that transportation projects are protective and more compatible with the natural and human environment.</li> <li>To continuously improve and streamline the processes used to develop projects.</li> </ul>
NMFS	<ul style="list-style-type: none"> <li>To rebuild and maintain sustainable fisheries</li> <li>To promote the recovery of protected species</li> <li>To protect and maintain the health of coastal marine habitats.</li> </ul>	<ul style="list-style-type: none"> <li>Same as that of NOAA</li> </ul>	<ul style="list-style-type: none"> <li>Office of Protective Resources have a process whereby regions submit their NEPA packages to Headquarters where they are reviewed before final approval of NEPA package.</li> </ul>	<ul style="list-style-type: none"> <li>Same as that of NOAA</li> </ul>

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AGENCY	<i>1a) What is your agency's mission?</i>	<i>1b) What is your agency's responsibility under NEPA?</i>	<i>2a) What is your agency's role in NEPA?</i>	<i>2b) What is your agency's role in carrying out environmental streamlining?</i>
BLM	<ul style="list-style-type: none"> <li>• To administer 262 million acres of public lands</li> <li>• To sustain the health, diversity and productivity of the public lands for the use and enjoyment of present and future generations.</li> </ul>	<ul style="list-style-type: none"> <li>• Oversee BLM management involving public involvement and disclosure and interdisciplinary analysis.</li> <li>• Review all Land Use Plans (LUPs) for every BLM action</li> </ul>	<ul style="list-style-type: none"> <li>• Provide a planning and NEPA base for landscaping issues on a regional basis</li> </ul>	<ul style="list-style-type: none"> <li>• Streamlining consultations under ESA</li> </ul>
FTA	<ul style="list-style-type: none"> <li>• To ensure personal mobility and America's economic and community vitality by supporting high quality public transportation through leadership, technical assistance and financial resources.</li> </ul>	<ul style="list-style-type: none"> <li>• To integrate into planning and decision making the natural and social sciences, environmental amenities and values, and the design arts along with the necessary engineering and economic considerations.</li> <li>• To balance infrastructure development, economic prosperity, health and environmental protection, community and neighborhood preservation, and quality of life.</li> </ul>	<ul style="list-style-type: none"> <li>• FTA uses the NEPA process as the overarching umbrella under which the mandates and considerations of all laws affecting transit project development are considered.</li> <li>• If State or local agencies expect to seek FTA funding assistance for implementation of a resulting project, FTA must gauge the appropriate level of assessment and review of environmental impacts.</li> <li>• If a transit project proposed for FTA New Start funding is emerges as the preferred alternative, FTA coordinates the later stages of the NEPA review process with the New Starts evaluation procedures described above.</li> </ul>	<ul style="list-style-type: none"> <li>• In evaluating New Start projects, FTA strives to ensure that there are no outstanding issues that could delay or derail the project at a later time. Only projects that receive an overall rating of "recommended" or "highly recommended" are eligible for multi-year funding recommendations.</li> <li>• FTA is preparing authorizing legislation to provide resources within the Formula Grants program in FY 2003, to continue environmental streamlining efforts currently underway.</li> </ul>